IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Appeal No.658-DB of 2000.

DECIDED ON : 18.4.2009

Shamsher and others

Appellants.

VERSUS

State of Haryana

Respondent.

CORAM :HON'BLE MR. JUSTICE JASBIR SINGH.
HON'BLE MR. JUSTICE JORA SINGH.

Present:- Mr. Deepinder Singh, Advocate, for
the appellant.
Mr. H.S.Gill, Sr.Advocate, with
Mr. Vivek Goel,Advocate, for
the complainant.
Mr. S.S.Randhawa,
Additional Advocate General, Haryana.

JORA SINGH,J.

Through the instant criminal appeal, Shamsher, Rajesh, Ram Bhagat and Sarjo Devi have impugned the judgment dated 9.12.2000 and order dated 14.12.2000, rendered by Sessions Judge, Sonepat in Sessions case No.43 of 1998, Sessions Trial No. 41 of 1998, in First Information Report No.166 dated 29.5.1998, Police Station Ganaur, registered under

section 302 read with Section 34 of the Indian Penal Code, whereby they were convicted under Sections 302 read with Section 34 of the Indian Penal Code and were sentenced as under:-

> Accused were sentenced to undergo imprisonment for life under Section 302 read with Section 34 of the Indian Penal Code and to pay a fine of Rs.4000/- each. In default of payment of fine, they shall further undergo rigorous imprisonment for six months."

Prosecution story, in brief, is that a V.T. Message was received in the Police Station Ganaur to the effect that dead body of Pawan Kumar was brought in the Civil Hospital, Sonepat. On receipt of message, police party headed by Sub Inspector Sube Singh had gone to Civil Hospital, Sonepat, where Ramdhan had met the police party. Statement of Ramdhan Ex.PG was recorded who stated that on 29.5.1998 at about 5.45 A.M. his nephew Pawan Kumar son of Chand Ram aged about 18 years was returning to his house after answering the call of nature. He along with his nephew Bishan Lal was going to answer the call of nature.

Pawan Kumar reached in the street in front of the house of Ram Bhagat, then they sighted Sarjo Devi wife of Ram Bhagat, Rajesh son of Ram Bhagat and Shamsher son of Ram Kishan. When they came out of their house, Sarjo Devi had caught hold Pawan Kumar from the front side and Rajesh had caught hold Pawan Kumar from his arms. In the meantime, Ram Bhagat came and raised lalkara not to spare Pawan Kumar. Then Shamsher armed with a khukhri gave blow in the back of Pawan Kumar. Second blow was given on the left shoulder of Pawan Kumar. They tried to intervene to save Pawan Kumar. After that Sarjo Devi had gone inside her house. Rajesh and Shamsher had fled away from the spot along with khukhri. Cover of the khukhri was left at the spot. He had caught hold of Ram Bhagat, but Ram Bhagat managed to escape from the spot. Parna of Ram Bhagat remained in the hand of the complainant. Balwan and Randhir also came to the spot. They had noticed the assailants while fleeing from the spot. Pawan Kumar on receipt of injuries had a fall on the heap of bricks. Parna snatched from Ram Bhagat accused was tied on the back and chest of Pawan Kumar. Pawan Kumar was being shifted to

hospital but on the way, Pawan Kumar had succumbed to his injuries.

Motive to cause injuries was that Rajesh was married in village Goli. Few days after the marriage, some dispute arose amongst Rajesh and his wife. Panchayat was convened. Chand Ram father of Pawan Kumar and Randhir had served meal to the Panchayat of village Goli. Accused party was suspecting that food was served to the Panchayat by Chand Ram and wife of Rajesh namely, Birmati had gone to her parental house at the instance of Chand Ram. On account of this grudge, one week earlier, Rajesh had given fist blows to the grand son of the complainant namely Surjit. Dinesh Rajesh and Shamsher came in a car with an intention to beat Pawan Kumar and also to abduct him. Application was given to the police regarding this occurrence. Police came to the village and there was a compromise on the intervention of the villagers. Statement was read over and explained to Ramdhan, who had signed the same in token of its correctness.

After making endorsement, statement was sent to the Police Station, on the basis of which, formal First Information Report was recorded.

Sub Inspector Sube Singh then prepared inquest report Ex.PN. Dead body was handed over to the police officials for post mortem examination. After post mortem examination, Head Constable Ram Kumar had handed over the sealed parcel of the clothes of the deceased. Sealed parcel was taken into police possession vide recovery memo attested by the witnesses. After visiting the place of occurrence, rough site plan was prepared with its correct marginal notes. Blood stained earth was lifted from the spot and was made into sealed parcel, sealed with a seal bearing impression "SS". Sealed parcel was taken into police possession vide separate memo attested by the witnesses. Cover of the Khukhri was also taken into police possession and the same was made into sealed parcel vide separate memo attested by the witnesses.

On 3.6.1998 investigation of the case was with Inspector Ravinder Kumar. Saliq Ram had produced Ram Bhagat, Shamsher and Rajesh, Shamsher was interrogated and as per disclosure statement suffered by Shamsher, Khukhri was recovered from the specified place. Sketch of the khukhri was prepared and the khukhri was sealed with a seal bearing impression "RS".

Sealed parcel was taken into police possession vide separate memo attested by the witnesses. Jai Kumar had also produced Sarjo Devi before the Investigating Officer. On return to the police station, case property was deposited with the MHC.

After completion of investigation, accused were challaned.

The case was committed to the Court of Session for trial.

Accused were charged under Section 302 read with Section 34 of the Indian Penal Code, to which they pleaded not guilty and claimed trial.

In order to substantiate the charges, the prosecution examined PW-1 Dr. S.K.Gosain who stated that on 29.5.1998 dead body was brought to the hospital. After that he had sent ruqa Ex.PA at 6.45 A.M.

PW-2 Constable Inder Pal had prepared scaled site plan Ex.PB.

PW-3 Constable Dhan Singh had delivered special report to the Ilaqa Magistrate and on 23.6.1998 had deposited four sealed parcels in the laboratory.

PW-4 Head Constable Ram Kumar got conducted the post mortem examination on the dead

body of Pawan Kumar.

PW-5 Ramdhan is the complainant. PW-6 Bishan Lal is the eye witness. Both have supported the prosecution story by saying that Pawan Kumar was murdered by the appellants-accused.

PW-7 Rambir was with the Investigating Officer and khukhri was got recovered by Shamsher as per his disclosure statement.

PW-8 Siri Bhagwan stated that on 28.5.1998 and 29.5.1998, he was on leave.

PW-9 Dr. Purnima Ahuja had conducted post mortem examination on the dead body of Pawan Kumar on 29.5.2998 and found the following injuries on his person:-

1. An incised wound 4 cm x 1.2 cm present on the lateral side of the left shoulder. Wound was muscle deep with clotted blood in it.
2. A stab wound with clean cut margins 2.5 x 1 cms present over the left scapular region. Blood oozing out. On dissection the stab after piercing the body of the scapula inter-coastal muscle was going directly into the left pleural cavity injuring the lungs almost

in the middle on its posterior aspect. The left pleural cavity was full of blood.

3. Abrasion just below the left eye going up to the nose mallar prominence.
4. Abrasion was also seen on the left side of the fore-head.
5. Reddish abrasion was present just below the right eye, and on the lower lip with infiltration over the subcutaneous tissue.

Rest of the organs of the body were healthy and pale.

Cause of death as per doctor was due to shock and haemorrhage, as a result of the stab wound of the chest injuries, the lung of which was ante mortem in nature and was sufficient to cause death in ordinary course of nature. Probable time that elapsed between injury and death was within few minutes, between death and post mortem examination was about 12 hours.

PW-10 Sub Inspector Sube Singh had also investigated the case in hand. He had arrested the accused and effected recovery of khukhri in pursuance of disclosure statement suffered by Shamsher.

After close of the prosecution evidence, the

accused were examined under Section 313 Cr.P.C. to explain the allegations levelled against them to which, they denied all the allegations and claimed to be innocent. Defence version of the appellant-accused was that they are innocent. The occurrence had not taken place as alleged in front of the house of Ram Bhagat. In fact, dead body was found lying in Gora-Deh of village Rolad Latifpur and the incident might have taken place during the night time.

Opportunity was given to lead defence, but no defence was led.

We have heard Mr. Deepinder Singh, Advocate, for the appellants, Mr.H.S.Gill,Sr.Advocate, with Mr. Vivek Goel, Advocate, for the complainant, Mr. S.S.Randhawa, Additional Advocate General, Haryana and have gone through the file very carefully and thoroughly with their assistance.

Defence counsel for the appellants-accused argued that it was a case of blind murder. No one had witnessed the occurrence. There was previous enmity amongst the parties. Due to enmity, the appellants-accused were falsely implicated. Presence of the eye witnesses is doubtful. Occurrence had taken place at

about 5.45 A.M. whereas statement of the complainant was recorded at about 12 noon. Special report was received by the Ilaqa Magistrate at about 3.15 P.M. Dead body was received in the hospital at 6.45 P.M. After the death, there was no idea to visit Gurgaon to inform Joginder brother of the deceased. By deputing one person to guard the dead body second could easily inform the police. As per evidence, Investigating Officer came to the hospital at about 7.30 A.M. whereas complainant had left the hospital at about 7.45 A.M. then statement of the complainant could easily be recorded. Complainant by crossing Delhi to inform Joginder at Gurgaon, cannot be back in the Civil Hospital at about 11.30 A.M. Joginder, brother of the deceased and Chand Ram father of the deceased were in the Police Department. Story was concocted by the police party that is why, statement of the complainant was recorded at about 12 noon. In case, complainant and the eye witnesses had shifted the dead body to the Civil Hospital, Sonepat then in the Ruqa name of the complainant or Bishan Lal should have been written. After visiting the hospital, at about 7.30 A.M. there was no writting by the Investigating Officer till arrival of the complainant. No

official was deputed to guard the place of occurrence. Blood stained earth was lifted from the spot in front of the house of the accused. Dead body was lying at a place i.e. point C and distance of point A from C was 58 feet. No blood trail was noticed. In case, the injuries were caused to the deceased at point A and deceased had a fall at point C then from point A to C there should have been trail of blood. Failure to notice trail of blood shows that occurrence had not taken place as alleged by the prosecution. If due to previous enmity, appellants-accused were to cause injuries, then Ram Bhagat, Rajesh and Sarjo Devi were expected to bring weapon but they were not armed. They were implicated being the relations of Shamesher. No common intention amongst the appellants-accused to commit the crime. The learned counsel,thus, requested to accept the appeal.

Mr.S.S. Randhawa, Additional Advocate Gereral, Haryana, argued that there was previous enmity amongst the parties. Due to enmity, Pawan Kumar was murdered. Blood stained earth was lifted from the spot where dead body was lying. Plot of Ramdhan was katcha one. Place of occurrence was a katcha street. Occurrence was in the morning. Blood

trail was not noticed in the vacant katcha plot. Delay was fully explained. Occurrence was in front of the house of the accused in the morning. So, there was no idea to leave the real culprits.

First submission of the learned defence counsel was that it was a case of blind murder. Before the present occurrence, the complainant party was inimical towards the appellants-accused. In fact, dead body was noticed earlier in the morning in the vacant site. Due to previous enmity amongst the parties, the appellants-accused were named but we are not in a position to agree with the submission of learned defence counsel because as per evidence occurrence was in front of the house of the appellants-accused. Dead body was recovered from the vacant plot of the complainant. According to the prosecution, one year before the occurrence, Rajesh was married and had a dispute with his wife. There was a Panchayat. Food was supplied to the Panchayat by Chand Ram father of the deceased and Randhir. Due to this grudge, one week earlier, Rajesh gave fist blows to the grandson of the complainant. No defence was led that Rajesh had no dispute with his wife and there was no Panchayat. Rajesh had not given fist blows to Surjit

and there was no complaint to the police and after complaint, there was no compromise. Occurrence was at about 5.45 A.M. Post mortem examination was conducted at 3.15 P.M. Probable duration between the injuries and death was within few minutes and between death and post mortem within 12 hours. Dead body of Pawan Kumar was received in the hospital at about 6.45 A.M. Ruqa was sent to the concerned police station immediately. According to the prosecution story, deceased was returning after answering the call of nature where the eye witnesses were going to answer the call of nature. Large intestine was also found pale and containing faecal matter and gases. Stomach contained small amount of fluid and gases. Dead body was lying in the open plot of the complainant at a distance of about 58 feet from the house of the appellants-accused. Injuries were given to the deceased, when he was present in front of the house of Ram Bhagat. Due to previous enmity, appellants-accused had the motive to cause injuries. Nothing on the file that the deceased was characterless and had criminal background. Complainant party had no enmity with anybody, then there is question as to why somebody has

murdered the deceased. Motive is a double edged weapon. Previous enmity can be the motive to commit the crime. At the same time, there is possibility of false implication also, but till today no complaint to any authority that the case is false. No respectable person came forward to state that the appellants-accused are innocent. In fact, murder is by some unknown persons. House of the complainant party was also near the place of occurrence. So, presence of eye witnesses at the time of occurrence while going to answer the call of nature was natural. Nothing to opine that it was a blind murder and due to previous enmity the appellants-accused were falsely implicated.

Second submission of learned defence counsel was that there is delay in lodging the First Information Report. Delay was not explained. In fact, delay was used to concoct the story. Occurrence was at 5.45 A.M. Dead body was in the hospital at 6.45 A.M. Both the eye witnesses had shifted the dead body to Civil Hospital, Sonepat. Police came to the hospital at about 7.30 A.M. Complainant had left the hospital at about 7.45 A.M. That means, the complainant was in the hospital when police party had reached there but statement of the

complainant was recorded at about 12 noon. Allegation of the prosecution is that the complainant had gone to Gurgaon to inform Joginder about the present occurrence. Second witness had gone to the village after the death of Pawan Kumar. There was no idea to visit Gurgaon or village. By deputing one person to guard the dead body, second eye witness could approach the police station. When delay was not explained, then story is unnatural and is to be ignored. Submission of the learned defence counsel carries little weight. Occurrence was at about 5.45 A.M. in front of the house of Ramdhan but dead body was shifted to Civil Hospital, Sonepat and the dead body was received in the hospital at 6.45 A.M. Immediately, ruqa Ex.PA through constable was sent at 6.50 A.M. Investigating Officer came to the hospital at 7.30 A.M. but the eye witnesses were not available in the hospital. Ramdhan complainant had gone to Gurgaon to inform about the murder of Pawan Kumar to Joginder who is the real brother of the deceased. Bishan Lal second eye witness had gone to village to inform about the death of Pawan Kumar. Balwan and Randhir had also seen the accused while running from the spot after committing the crime. Persons present in the hospital

near the dead body did not lodge report because they had not witnessed the occurrence. Complainant along with Joginder came back to Civil Hospital at about 11.30 A.M., then statement of the complainant was recorded at about 12 noon. Joginder was in the police department. Father of the deceased due to accident was not in a position to move. All depends upon the circumstances of the case as to how the witness present on the spot reacts. Sometime, the eye witnesses to avoid enmity with the assailants avoids to inform the Police before giving information to the close relation of the deceased. Joginder brother of the deceased came to hospital along with the complainant. Joginder was in the police department. If prosecution was to concoct the story, then it was very easy for the Investigating Officer to note down time on the statement as 8 or 9 A.M. because after recording the statement, endorsement is made, then statement is sent to the police station through some constable. Constable sent with ruqa could easily state that on the way he had some difficulty due to fault in the vehicle or he had consumed some time to purchase medicine etc., because he was not feeling well. Instead of showing the statement to be recorded at 8 or 9 A.M.

Investigating Officer stated that statement of the complainant was recorded at about 12 noon in the hospital. Investigating Officer no where stated that when he had reached the Civil Hospital, at that time, Ramdhan or Bishan Lal had met him. Endorsement on the statement Ex.PG is to the effect that when the Investigating Officer had reached the Civil Hospital, then no eye witness was present there. He had waited for some time then Ramdhan came and after that statement was recorded. From Civil Hospital, Sonepat, ruqa was sent to the concerned Police Station but in the ruqa names of the person who brought dead body to hospital were not mentioned and if some mistake was committed by the hospital authority then complainant party should not suffer. After reaching Civil Hospital, Sonepat, no official was sent to guard the place of occurrence because eye witnesses were not available. Witnesses were to disclose where the occurrence had taken place. If story was to be concocted, then in papers Investigating Officer could easily show that such and such police official was sent to guard the place of occurrence and the official deputed could easily state that when he had gone to the place of occurrence, then

villagers were seen while passing to through place of occurrence. Place where injuries were caused was the common street. In the morning, villagers usually go to the fields to answer the call of nature. Dead body was lying in the open plot. So, nobody noticed not to pass through the common street i.e. the place of occurrence. Blood stained earth was lifted from the spot from where dead body was lifted. With the movements of villagers through the street to answer the call of nature in the morning, blood was not noticed at the place of occurrence. From point A to point C as shown in the site plan blood trail was not noticed because vacant plot of Ramdhan was katcha. First of all, delay was explained in lodging the report and if we presume that there is some delay, then delay itself is not sufficient to brush aside the prosecution story. Delay is one of the suspicious circumstance to scrutinize the evidence with great care and caution.

Last submission of learned defence counsel was that only Shamsher appellant-accused was armed and he gave two blows with khukhri. Other appellants-accused were not armed. They did not cause injuries to the deceased. They are related to the main accused. Due

to previous enmity, Rajesh, Ram Bhagat and Sarjo Devi were implicated. House of Shamsher was separate from the house of other appellants-accused. House of Ram Bhagat was at a distance of 500 yards in a different street from the house of Shamsher. There was no meeting of mind. Appellants-accused had no common intention to commit the crime. Possibility of false implication of the appellants-accused except Shamsher can not be ruled out. Submission of learned defence counsel seems to be reasonable one. Sarjo Devi is the wife whereas Rajesh is the son of Ram Bhagat. Shamsher is the nephew of Ram Bhagat. Shamsher was residing separately from Ram Bhagat. Their houses were at a distance of 500 yards in different streets. Previous enmity of the complainant party was with Rajesh. If due to previous enmity, Rajesh, Ram Bhagat and Sarjo Devi had a common intention with Shamsher to commit the crime, then they should have brought weapons. Brick bats were lying near the place of occurrence. Rajesh, Ram Bhagat and Sarjo Devi could easily hurl brick bats. On seeing deceased in front of their house, they could easily bring weapons from their house but they had not brought any weapon. No injury

was caused to the deceased. Shamsher was residing separately in a separate street at a distance of 500 yards. So, we are of the opinion that due to previous enmity, Rajesh, Ram Bhagat and Sarjo Devi were implicated along with the main accused namely Shamsher, who had given two khukhri blows to the deceased. Presence of above said three appellants-accused is doubtful, but evidence on the file was misread by the trial Court. When there was no common intention amongst the appellants-accused to commit the crime, then benefit of doubt is given to Rajesh, Ram Bhagat and Sarjo Devi.

No other contention was put forward.

In view of all discussed above, the appeal is partly allowed. Appeal on behalf of Shamsher is dismissed, whereas appeal on behalf of Rajesh, Ram Bhagat and Sarjo Devi is accepted. They are acquitted. Acquitted accused are on bail.

(JORA SINGH)
JUDGE

18.04.2009. **(JASBIR SINGH)**
Anoop **JUDGE**